

FILED  
05-15-2020  
Clerk of Circuit Court  
Washington County, WI  
2020CV000233  
Honorable Sandra J.  
Giernoth  
Branch 4

**STATE OF WISCONSIN CIRCUIT COURT WASHINGTON COUNTY**

**THOMAS L. SHELBY and  
JUDY SHELBY,  
3398 Caleb Court  
West Bend, WI 53090,**

**Case No.**

**Plaintiffs,**

**and**

**HUMANA WISCONSIN HEALTH  
ORGANIZATION INSURANCE  
CORPORATION,  
N19w24133 Riverwood Drive, Suite 300  
Waukesha, WI 53188-1145,**

**and**

**UNITEDHEALTHCARE OF WISCONSIN, INC.  
W1030-1000 10701 West Research Drive  
Wauwatosa, WI 53226-0649,**

**and**

**SYLVIA MATHEWS BURWELL,  
Secretary of the Department  
of Health and Human Services,  
MEDICARE PART A AND MEDICARE PART B,  
c/o US Attorney's Office  
517 East Wisconsin Avenue, Room 530  
Milwaukee, WI 53202-4509,**

**Involuntary Plaintiffs,**

**vs.**

**WALMART, INC.,  
702 South West 8<sup>th</sup> Street  
Bentonville, AR 72716  
c/o CT Corporation System, registered agent  
301 South Bedford Street, Suite 1  
Madison, WI 53703,**

**SUMMONS**

**Case Code: 30107,  
Personal Injury—Other**

**WAL-MART ASSOCIATES, INC.,**  
702 South West 8<sup>th</sup> Street  
Bentonville, AR 72716,  
c/o CT Corporation System, registered agent  
301 South Bedford Street, Suite 1  
Madison, WI 53703,

**WAL-MART REAL ESTATE BUSINESS TRUST,**  
702 South West 8<sup>th</sup> Street  
M/S #0555 Tax Department  
Bentonville, AR 72716,  
c/o CT Corporation System, registered agent  
8040 Excelsior Drive, Suite 200  
Madison, WI 53717,

and

**CLAIMS MANAGEMENT, INC.**  
922 West Walnut Street  
Rogers, AR 72756,  
c/o CT Corporation System, registered agent  
301 South Bedford Street, Suite 1  
Madison, WI 53703,

**Defendants.**

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**THE STATE OF WISCONSIN**

To each person named above as a defendant:

**YOU ARE HEREBY NOTIFIED** that the plaintiff above named has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written Answer, as that term is used in Chapter 802 of the *Wisconsin Statutes*, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is:

Washington County Courthouse  
484 Rolfs Avenue  
West Bend, WI 53090

and to plaintiff's attorney, whose address is:

O'Meara Law Firm, LLC  
124 East Sumner Street  
P.O. Box 270468  
Hartford, Wisconsin 53027-0468

You may have an attorney help or represent you.

If you do not provide a proper Answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: May 15, 2020

O'MEARA LAW FIRM, LLC  
Attorneys for Plaintiffs

BY: Electronically signed by Timothy J. Algiers  
Timothy J. Algiers  
State Bar No. 1012418

P.O. ADDRESS:  
124 East Sumner Street  
P.O. Box 270468  
Hartford, WI 53027-0468  
Tele: (262) 673-7700  
Fax: (262) 673-7087

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**STATE OF WISCONSIN CIRCUIT COURT WASHINGTON COUNTY**

**THOMAS L. SHELBY and  
JUDY SHELBY,  
3396 Caleb Court  
West Bend, WI 53090,**

**Case No.**

**Plaintiffs,**

**COMPLAINT**

**and**

**Case Code: 30107,  
Personal Injury—Other**

**HUMANA WISCONSIN  
HEALTH ORGANIZATION INSURANCE  
CORPORATION,  
N19W24133 Riverwood Drive, Suite 3300  
Waukesha, WI 53188-1145,**

**and**

**UNITEDHEALTHCARE OF WISCONSIN, INC.  
W1030-1000 10701 West Research Drive  
Wauwatosa, WI 53226-08449,**

**and**

**SYLVIA MATHEWS BURWELL,  
Secretary of the Department of  
Health and Human Services,  
MEDICARE PART A AND MEDICARE PART B  
c/o US Attorney's Office  
517 East Wisconsin Avenue, Room 530  
Milwaukee, WI 53202-4509,**

**Involuntary Plaintiffs,**

**vs.**

**WALMART, INC.,  
702 South West 8<sup>th</sup> Street  
Bentonville, AR 72716  
c/o CT Corporation System, registered agent  
301 South Bedford Street, Suite 1  
Madison, WI 53703,**

**WAL-MART ASSOCIATES, INC.,  
702 South West 8<sup>th</sup> Street  
Bentonville, AR 72716,  
c/o CT Corporation System, registered agent  
301 South Bedford Street, Suite 1  
Madison, WI 53703,**

**WAL-MART REAL ESTATE BUSINESS TRUST,  
702 South West 8<sup>th</sup> Street  
M/S #0556 Tax Department  
Bentonville, AR 72716,  
c/o CT Corporation System, registered agent  
8040 Excelsior Drive, Suite 200  
Madison, WI 53717,**

**and**

**CLAIMS MANAGEMENT, INC.  
922 West Walnut Street  
Rogers, AR 72756,  
c/o CT Corporation System, registered agent  
301 South Bedford Street, Suite 1  
Madison, WI 53703,**

**Defendants.**

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**NOW COMES, the Plaintiffs, Thomas L. Shelby and Judy Shelby, by their attorneys, O'Meara Law Firm, LLC, by Attorney Timothy J. Algiers, as and for their claims for relief against the above-named Defendants, alleges and shows to the Court as follows:**

**I. PARTIES**

**1. That the Plaintiffs, Thomas L. Shelby and Judy Shelby, are adult residents of Washington County, Wisconsin, with a home address of 3396 Caleb Court, West Bend, Wisconsin 53090.**

2. That, the Involuntary Plaintiff, Humana Wisconsin Health Organization Insurance Corporation, is a Wisconsin corporation, with its home office and principal place of business located at N19W24133 Riverwood Drive, Suite 300, Waukesha, Wisconsin 53188-1145, is and was at all times material hereto, engaged in the business, among other things, of writing health insurance policies in the State of Wisconsin. Said Involuntary Plaintiff's registered agent for service of process is Corporation Service Company, 8040 Excelsior Drive, Suite 400, Madison, Wisconsin 53717. Said Involuntary Plaintiff issued a policy of health insurance to the Plaintiffs, Judy Shelby and Thomas L. Shelby, and, upon information and belief, has paid medical bills incurred by the Plaintiff, Thomas L. Shelby, as a result of the incident described herein and may have a subrogation claim relating to those payments.

3. That, at the present time, the Involuntary Plaintiff, UnitedHealthcare of Wisconsin, Inc., is a domestic corporation, with its home office and principal place of business located at W1030-1000 10701 West Research Drive, Waukesha, WI 53228-0649, and is and was at all times material hereto, engaged in the business, among other things, of writing health insurance policies in the State of Wisconsin. Said Involuntary Plaintiff's registered agent for service of process is CT Corporation System, 301 South Bedford Street, Suite 1, Madison, Wisconsin 53703. Said Involuntary Plaintiff issued a policy of health insurance to the Plaintiff, Thomas L. Shelby, and, upon information and belief, has paid medical bills incurred by the Plaintiff, Thomas L. Shelby, as a result of the accident described herein and may have a subrogation claim relating to those payments.



4. That, at the present time, the Involuntary Plaintiff, Sylvia Mathews Burwell, Secretary of the United States Department of Health and Human Services, has oversight responsibility for the Centers for Medicare & Medicaid Services ("CMS"), the centers responsible for administering the federal Medicare program. Upon information and belief, the Medicare program paid health claims on behalf of the Plaintiff, Thomas L. Shelby, for medical care and services rendered as a result of the accident which is the subject of this case. Pursuant to 42 U.S.C. Section 1395(b)(2), Medicare is entitled to reimbursement for related paid claims, related to this lawsuit, if said Plaintiff recovers through settlement or judgment. Plaintiff asserts no claim against the United States, its agencies or employees.

5. That, the Defendant, Walmart, Inc., is a foreign corporation, with its principal place of business located at 702 SW 8<sup>th</sup> Street, Bentonville, Arkansas 72716. Said Defendant's registered agent for service of process is CT Corporation System, 301 South Bedford Street, Suite 1, Madison, WI 53703.

6. That, upon information and belief, at all times material, Walmart, Inc., did substantial and not isolated business in Wisconsin and was the owner and operator of the Walmart, Inc. Store #2658, located at 1515 West Paradise Drive, West Bend, WI 53095, and was responsible for the operation, inspection, repair, maintenance and upkeep of said store.

7. That, upon information and belief, Wal-Mart Associates, Inc., is a foreign corporation, with its principal place of business located at 702 SW 8<sup>th</sup> Street, Bentonville, Arkansas 72716. Said Defendant's registered agent for service of process is CT Corporation System, 301 South Bedford Street, Suite 1, Madison, WI 53703.

8. That, upon information and belief, at all times material, Wal-Mart Associates, Inc., did substantial and not isolated business in Wisconsin and was the owner and operator of the Walmart, Inc. Store #2658, located at 1515 West Paradise Drive, West Bend, WI 53095, and was responsible for the operation, inspection, repair, maintenance and upkeep of said store.

9. That, upon information and belief, Wal-Mart Real Estate Business Trust, is a foreign corporation, with its principal place of business located at 702 SW 8<sup>th</sup> Street, M/S #0555 Tax Department, Bentonville, AR 72716-0555. Said Defendant's registered agent for service of process is CT Corporation System, 8040 Excelsior Drive, Suite 200, Madison, WI 53717.

10. That, upon information and belief, at all times material, Wal-Mart Real Estate Business Trust, did substantial and not isolated business in Wisconsin and was the owner and operator of the Walmart, Inc. Store #2658, located at 1515 West Paradise Drive, West Bend, WI 53095, and was responsible for the operation, inspection, repair, maintenance and upkeep of said store.

11. That, the Defendant, Claims Management, Inc., is a foreign corporation with its home office and principal place of business located at 922 West Walnut Street, Rogers, Arkansas 72756, and is and was at all times material hereto, engaged in the business, among other things, of writing premises liability or general business liability insurance in the State of Wisconsin. At all relevant times, said Defendant had in effect a General Business Liability Insurance policy, insuring the Defendant, Walmart, Inc., in the State of Wisconsin. Said Defendant's registered agent for service of process is CT Corporation System, 301 South Bedford Street, Suite 1, Madison, WI 53703. Said



Defendant-insurer is a proper party to this action by virtue of Section 632.24 of the Wisconsin Statutes.

**II. PLAINTIFFS' FIRST CLAIM FOR RELIEF**  
**(COMMON LAW NEGLIGENCE)**

12. Reallege and incorporate by reference the allegations contained in paragraphs 1 through 11, above.

13. That, on or about May 25, 2019, the Plaintiff, Thomas L. Shelby, was walking into the Walmart, Inc. Store #2658, located at 1515 West Paradise Drive, West Bend, WI 53095, when he caught his foot on a bunched up area of the carpeting and he tripped and fell.

14. That, the aforesaid Defendants, Walmart, Inc., Wal-Mart Associates, Inc. and/or Wal-Mart Real Estate Business Trust (hereinafter referred to as "Walmart"), as owners of said commercial building, were negligent in the operation, inspection, repair, maintenance and upkeep and repair of the Walmart, Inc. Store #2658 where Plaintiff, Thomas L. Shelby, was injured, in, but not limited to, the following ways:

- A. Failing to maintain the entrance rugs;
- B. Failure to repair or otherwise make safe said unsafe floor condition;
- C. Failure to warn of said unsafe floor condition; and
- D. Failure to train employees to report and/or remedy unsafe conditions in said store.

15. That, the foregoing allegations constituted negligence on the part of the Defendants, and as a result of said negligence, the Plaintiff, Thomas L. Shelby, suffered severe injuries to his limbs, hips and trunk, he suffered the loss of two teeth, along with

other physical injuries, and incurred past and future medical expenses, pain, suffering and disability all to his damages in an amount to be determined by the jury.

**III. PLAINTIFFS' SECOND CLAIM FOR RELIEF**  
**(COMMON LAW NEGLIGENCE)**

16. Reallege and incorporate by reference the allegations contained in paragraphs 1 through 15, above.

17. That, the Plaintiff, Judy Shelby, as spouse of the Plaintiff, Thomas L. Shelby, has sustained, also as a result of said negligence of said Defendants-Walmart, injury and damages in the loss of society and companionship of her spouse, Thomas L. Shelby.

**IV. PLAINTIFFS' THIRD CLAIM FOR RELIEF**  
**(SAFE PLACE LAW)**

18. Reallege and incorporate by reference the allegations contained in paragraphs 1 through 17, above.

19. That, said Defendant-Walmart's facility, located at the above-stated Hartford address, was a "place of employment" within the meaning of Section 101.01(11), Wisconsin Statutes.

20. That, on or about May 25, 2019, the Plaintiff, Thomas L. Shelby, was lawfully on the premises of said facility, and was a "frequenter" within the definition of Section 101.01(6), Wisconsin Statutes.

21. That, on or about May 25, 2019, on information and belief, all of the Defendants-Walmart, were the "owners" of said facility as defined by Section 101.01(10), Wisconsin Statutes.

22. That, on information and belief, all of the Defendants-Walmart, were at all relevant times the "employers," which at all times was located and conducted business at said location (place of employment), within the meaning of Section 101.01(4), Wisconsin Statutes.

23. That, under Section 101.01, et. sec. of the Wisconsin Statutes, otherwise known as the "Safe Place Law," said Defendants-Walmart, owed a duty to furnish a place of employment which shall be safe for the employees therein and for *frequenters thereof*...and to do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees and frequenters. Further, said Defendants-Walmart had a duty to construct, repair or maintain such place of employment, and to render the same safe.

24. That, the aforementioned unsafe condition with respect to the bunched-up entrance rug, constituted an unsafe condition affecting the premises, in that the premises were not maintained in a manner which served to render the same safe. Further, all methods in place resulted in an unsafe condition whereby the bunched-up entrance rug upon which said Plaintiff tripped and fell was not properly maintained or kept in an orderly condition, and that under the circumstances in this case, said Defendants-Walmart, had either actual or constructive notice of the dangerous conditions and failed to take steps to render said conditions safe.

25. That, the acts or omissions of said Defendant-Walmart constituted a failure with respect to the duties under said Safe Place Law, and as such, said Defendants-Walmart was negligent per se.

26. That, as a result of said negligence, the Plaintiff, Thomas L. Shelby, tripped and fell on a bunched-up entrance rug, causing the aforementioned injuries and damages.

**V. PLAINTIFFS' FOURTH CLAIM FOR RELIEF**  
**(SAFE PLACE LAW)**

27. Reallege and incorporate by reference the allegations contained in paragraphs 1 through 26, above.

28. That, the Plaintiff, Judy Shelby, as spouse of the Plaintiff, Thomas L. Shelby, has sustained, also as a result of said violation of the Safe Place Law (negligence per se) of said Defendants-Walmart, injury and damages in the loss of society and companionship of her spouse, Thomas L. Shelby.

29. That, the Defendant, Claims Management, Inc., as insurer of the Defendants-Walmart, is also liable for said injuries and damages to the Plaintiffs caused by the negligence of said Defendants-Walmart, as set forth in the First, Second, Third and Fourth Claims for Relief.

WHEREFORE, the Plaintiffs, Thomas L. Shelby and Judy Shelby, by their attorneys, O'Meara Law Firm, LLC, by Attorney Timothy J. Algiers, hereby demand judgment against the Defendants, Walmart, Inc., Wal-Mart Associates, Inc., Wal-Mart Real Estate Business Trust and Claims Management, Inc., jointly and severally, for an amount of money which will fairly and reasonably compensate them for their injuries and damages, together with costs, disbursements, statutory attorney fees and such other and further relief as the Court shall deem just and equitable.

Dated at Hartford, Wisconsin, this 15th day of May, 2020.

O'MEARA LAW FIRM, LLC  
Attorneys for the Plaintiffs,  
Thomas L. Shelby and Judy Shelby

By: Electronically signed by Timothy J. Algiers  
Timothy J. Algiers  
State Bar No. 1012418

**PLAINTIFFS HEREBY DEMAND A JURY OF 12 PERSONS.**

PO ADDRESS:  
O'Meara Law Firm, LLC  
PO Box 270468  
Hartford, WI 53027-0468  
(262) 673-7700  
Fax: (262) 673-7087  
Email: [algiers@omearalawfirm.com](mailto:algiers@omearalawfirm.com)